Ahmad Faisal bin Abdul Karim v Mohd Radzi bin Md Jidin

HIGH COURT (KUALA LUMPUR) — ELECTION PETITION NO WA-26PP-1–01 OF 2023
FAIZAH JAMALUDIN J
13 MARCH 2023

Election — Petition — Allegation of corrupt practice — Voter cum election agent of unsuccessful candidate in contest for parliamentary seat filed election petition ('EP') to declare winner's victory void on ground he had either personally or through his agent bribed voters to win — Whether petitioner's failure to plead necessary facts and particulars to sustain cause of action of corrupt practice against victor under s 32(c) of Election Offences Act 1954 was fatal to the EP for failure to comply with r 4(1)(b) of Election Petition Rules 1954 — Whether failure to plead material facts to support charge of corrupt practice was so serious that it deprived election judge of jurisdiction to hear the EP

The respondent had won the Putrajaya Parliamentary seat in the 15th General Election ('GE-15') which took place in November 2022. In the instant election petition ('EP'), the petitioner, who was a voter and election agent for one of the unsuccessful candidates for the said seat, applied to declare the respondent's election void on the ground of a corrupt practice (bribery) allegedly committed by the respondent or his agent in connection with the election pursuant to s 32(c) of the Election Offences Act 1954 ('the EOA'). The respondent urged the court to strike out the EP on the grounds that: (a) the petitioner had failed to comply with r 4(1)(b) of the Election Petition Rules 1954 ('the EP Rules') in that he had failed to briefly state the facts and grounds relied on to sustain his allegation of corrupt practice under s 32(c) of the EOA; (b) the petitioner had not pleaded facts that showed that the alleged payment of bribe was 'in connection with the election' to enable him to file the EP within 28 days from the date of the alleged payment of the bribe under the proviso to s 38(1) of the EOA, and (c) the notice of appointment of the petitioner's advocate was defective for not being stamped under the Stamp Act 1949 and thereby r 9 of the EP Rules had been breached.

Held, striking out the EP for non-compliance with r 4(1)(b) of the EP Rules:

(1) It was settled law that the statutory requirements in the EOA were mandatory and had to be strictly observed. Section 42(1) of the EOA expressly stated that the practice and procedure of election petitions were regulated by the EP Rules as provided in the Second Schedule of the EOA. Rule 4(1)(b) of the EP Rules provided that the EP shall state the

holding and result of the election and shall briefly state the facts and grounds relied upon to sustain the prayer/prayers in the EP (see paras 19–21).

(2) For the petitioner to sustain his prayer under s 32(c) of the EOA, namely, that a corrupt practice — specifically the payment of RM150 to voters in connection with the election — had been committed by the respondent or his agent, he had to plead sufficient facts to constitute a cause of action for corrupt practice and bribery. However, the pleadings in the EP lacked the necessary facts and particulars to sustain a cause of action of corrupt practice under s 32(c) of the EOA against the respondent. Because of the dearth of material facts pleaded, the EP failed to comply with r 4(1)(b) of the EP Rules and was therefore defective. The defect was a jurisdictional one which deprived the Election Judge of the jurisdiction to hear the EP. For that reason, the EP had to be struck out (see paras 27 & 52–54).

(3) Paragraph 4.3 of the EP which contained an allegation of commission of bribery against the respondent or his agent under s 10(e) of the EOA had to be struck out because the petitioner had pleaded that the alleged act took place after GE-15. The offence under s 10(e) was only committed if the act was done before or during an election. Hence, the alleged offence, as pleaded, did not fall within s 10(e) of the EOA (see paras 31–33).

(4) For the petitioner to sustain a cause of action of corrupt practice under s 32(c) of the EOA, specifically the alleged bribery under s 10(a) and/or (c) of the EOA, the EP had to plead the basic facts that constituted the ingredients of bribery under s 10(a) and (c) and, at the very least, should have included facts that: (a) the respondent personally or indirectly through his agent had given and/or offered money or valuable consideration; (b) if money was paid and/or offered by either the respondent or his agent, how much money was paid or offered to each elector and/or voter and when and where after the GE-15 was the money given or offered to the said electors or voters; (c) if valuable consideration was given or offered, what was the form of consideration and when and where was it given or offered; (d) the names of the persons to whom the monies or the valuable consideration was given or offered (e) whether the persons who received or were offered the monies or valuable consideration were on the GE-15 electoral roll for the Putrajaya Parliamentary constituency; and (f) whether the intention of offering or giving the monies or valuable consideration either by the respondent personally or through his agent, was to induce the electors or voters to vote for the respondent or to refrain from voting for any other candidate vying for the Putrajaya Parliamentary seat in GE-15. The petitioner had not briefly pleaded any of these facts in the EP and thus failed to comply with r 4(1)(b) of the EP Rules (see paras 35, 38 & 40–45).

(5) The court could not agree with the respondent that the petitioner's notice of appointment of advocate in the EP was an instrument that was chargeable with stamp duty under the Stamp Act 1949 and that the EP should be struck out because the notice of appointment had not been stamped. The First Schedule of the Stamp Act specified the instruments that were chargeable with duty. If Parliament had wanted stamp duty to be payable on a notice of appointment of advocate in an EP under the EOA, it would have included the notice as a chargeable instrument in the said First Schedule (see paras 65 & 69).

[Bahasa Malaysia summary

Responden telah memenangi kerusi Parlimen Putrajaya pada Pilihan Raya Umum Ke-15 ('PRU-15') yang berlangsung pada November 2022. Dalam petisyen pilihan raya semasa ('EP'), pempetisyen, yang merupakan pemilih dan ejen pilihan raya untuk satu daripada calon yang tidak berjaya bagi kerusi tersebut, memohon untuk satu deklarasi bahawa pemilihan responden terbatal atas alasan amalan korup (rasuah) yang didakwa dilakukan oleh responden atau ejennya berkaitan dengan pilihan raya menurut s 32(c) Akta Kesalahan Pilihan Raya 1954 ('AKPR'). Responden menggesa mahkamah untuk membatalkan EP atas alasan bahawa: (a) pempetisyen telah gagal mematuhi k 4(1)(b) Kaedah-Kaedah Petisyen Pilihan Raya 1954 ('Kaedah PPR') kerana beliau telah gagal untuk menyatakan secara ringkas fakta dan alasan yang digunapakai untuk mengekalkan dakwaannya terhadap amalan korup di bawah s 32(c) AKPR; (b) pempetisyen tidak memplidkan fakta yang menunjukkan bahawa dakwaan pembayaran rasuah adalah 'berkaitan dengan pilihan raya' untuk membolehkannya memfailkan EP dalam tempoh 28 hari dari tarikh dakwaan pembayaran rasuah di bawah proviso kepada s 38(1) AKPR; dan (c) notis pelantikan peguamcara pempetisyen adalah cacat kerana tidak dimatisetem di bawah Akta Setem 1949 dan dengan itu k 9 Peraturan EP telah dilanggar.

Diputuskan, membatalkan EP kerana tidak mematuhi k 4(1)(b) Kaedah PPR:

(1) Ia adalah undang-undang yang mantap bahawa keperluan statutori dalam AKPR adalah wajib dan perlu dipatuhi dengan ketat. Seksyen 42(1) AKPR dengan jelas menyatakan bahawa amalan dan prosedur petisyen pilihan raya dikawal oleh Kaedah PPR seperti yang diperuntukkan dalam Jadual Kedua AKPR. Kaedah 4(1)(b) Kaedah PPR dengan syarat bahawa EP hendaklah menyatakan pegangan dan keputusan pemilihan dan hendaklah menyatakan secara ringkas fakta dan alasan yang dipercayai untuk mengekalkan permohonan dalam EP (lihat perenggan 19–21).

(2) Bagi pempetisyen untuk mengekalkan permohonannya di bawah s 32(c) AKPR, iaitu, satu amalan korup — khususnya pembayaran RM150 kepada pengundi berkaitan dengan pilihan raya — telah dilakukan oleh

responden atau ejennya, beliau harus memplidkan fakta yang mencukupi untuk membentuk kausa tindakan bagi amalan korup dan rasuah. Walau bagaimanapun, pliding dalam EP tidak mempunyai fakta dan butiran yang diperlukan untuk mengekalkan kausa tindakan amalan korup di bawah s 32(c) AKPR terhadap responden. Kerana kekurangan fakta material yang diplidkan, EP gagal mematuhi k 4(1)(b) Kaedah PPR dan oleh itu cacat. Kecacatan tersebut adalah yang dalam bidangkuasa yang melucutkan hak Hakim Pilihan Raya untuk mendengar EP. Atas sebab itu, EP terpaksa dibatalkan (lihat perenggan 27 & 52–54).

(3) Perenggan 4.3 EP yang mengandungi dakwaan pelakukan rasuah terhadap responden atau ejennya di bawah s 10(e) AKPR terpaksa dibatalkan kerana pempetisyen telah memplidkan bahawa perbuatan yang didakwa tersebut berlaku selepas PRU-15. Kesalahan di bawah s 10(e) hanya dilakukan jika perbuatan tersebut dilakukan sebelum atau semasa pilihan raya. Oleh itu, kesalahan yang didakwa, seperti yang diplidkan, tidak termasuk dalam s 10(e) AKPR (lihat perenggan 31–33).

(4) Bagi pempetisyen untuk mengekalkan kausa tindakan amalan korup di bawah s 32(c) AKPR, khususnya rasuah yang dikatakan di bawah s 10(a) dan/atau (c) AKPR, EP perlu memplidkan fakta asas yang membentuk ramuan rasuah di bawah s 10(a) dan (c) dan, sekurang-kurangnya, sepatutnya mengandungi fakta bahawa: (a) responden secara peribadi atau tidak langsung melalui ejennya telah memberi dan/atau menawarkan wang atau balasan berharga; (b) jika wang telah dibayar dan/atau ditawarkan oleh sama ada responden atau ejennya, berapa banyak wang telah dibayar atau ditawarkan kepada setiap pemilih dan/atau pengundi dan bila dan di mana selepas PRU-15 wang tersebut diberikan atau ditawarkan kepada pemilih atau pengundi tersebut; (c) jika balasan bernilai diberikan atau ditawarkan, apakah bentuk balasan dan bila dan di mana ia diberikan atau ditawarkan; (d) nama orang yang kepadanya wang atau balasan berharga tersebut diberikan atau ditawarkan; (e) sama ada orang yang menerima atau ditawarkan wang atau balasan berharga tersebut berada dalam daftar pemilih PRU-15 bagi kawasan Parlimen Putrajaya; dan (f) sama ada niat menawarkan atau memberi wang atau balasan berharga sama ada oleh responden secara peribadi atau melalui ejennya, adalah untuk mendorong pemilih atau pengundi mengundi responden atau mengelak daripada mengundi mana-mana calon lain yang bertanding di kerusi Parlimen Putrajaya pada PRU-15. Pempetisyen tidak memplidkan secara ringkas mana-mana fakta ini dalam EP dan dengan itu gagal mematuhi k 4(1)(b) Kaedah PPR (lihat perenggan 35, 38 & 40–45).

(5) Mahkamah tidak boleh bersetuju dengan responden bahawa notis pempetisyen pelantikan peguamcara dalam EP adalah surat cara yang boleh dikenakan duti setem di bawah Akta Setem 1949 dan EP itu harus

dibatalkan kerana notis pelantikan telah tidak dimatisetem. Jadual Pertama Akta Setem menyatakan instrumen yang boleh dikenakan duti. Jika Parlimen mahu duti setem dibayar atas notis pelantikan peguamcara dalam EP di bawah AKPR, ia akan memasukkan notis tersebut sebagai instrumen bercaj dalam Jadual Pertama tersebut (lihat perenggan 65 & 69).]

Cases referred to

Ali Amberan v Tunku Abdullah [1970] 4 MC 113; [1969] 1 LNS 6, HC (refd)

Audrey Karen Barry v Datuk Dr Yee Moh Chai [2009] 3 MLJ 141; [2010] 3 CLJ 660, FC (refd)

Comptroller-General of Inland Revenue, Malaysia v T [1970] 2 MLJ 35; [1969] 1 LNS 31, FC (refd)

Dr Shafie bin Abu Bakar lwn Pegawai Pengurus Pilihan Raya No 26 Bangi — Mohd Zakri bin Hj Hussin & lain-lain (No 1) [2005] 2 MLJ 191; [2005] 5 CLJ 349; [2005] 3 AMR 281, HC (refd)

Gan Joon Zin v Fong Kui Lun & Ors [2004] 4 CLJ 729; [2004] 6 AMR 590, FC (refd)

Gurdial Singh Nijar v KS Balakrishnan [1993] 2 CLJ 75; [1993] 1 AMR 379, HC (refd)

Khairuddin bin Abu Hassan v Datuk Seri Haji Ahmad Hamzah & Ors and another appeal [2019] MLJU 2177; [2019] 9 CLJ 315; [2020] 1 AMR 141, FC (refd)

Lower Mainland Dairy Products Sales Adjustment Committee v Crystal Dairy Ltd [1933] AC 168, PC (folld)

Mahari bin Endut v Dato' Hj Mat Razali bin Kassim & Ors [2009] 5 MLJ 153; [2009] 4 CLJ 488; [2009] AMR 793, FC (refd)

Mangin v Inland Revenue Commissioner [1971] AC 739, PC (refd)

Mohd Nazri bin Hj Din v Dato' Seri Raja Ahmad Zainuddin bin Raja Hj Omar & Ors [2009] 3 MLJ 589; [2009] 3 CLJ 221; [2009] 6 AMR 97, FC (refd)

Mohd Zaid bin Ibrahim v P Kamalanathan a/l P Panchanathan & Ors [2010] 6 MLJ 363; [2010] 8 CLJ 608; [2010] 5 AMR 556, HC (refd)

Palm Oil Research and Development Board Malaysia & Anor v Premium Vegetable Oils Sdn Bhd & Another Appeal [2005] 3 MLJ 97; [2004] 2 CLJ 265; [2003-2005] AMTC 85, FC (refd)

Pengkalan Kota By-election Teoh Teik Huat v Lim Kean Siew & Anor, Re [1981] 1 MLJ 265; [1981] 1 LNS 1 (refd)

Samuel Naik Siang Ting v Public Bank Bhd [2015] 6 MLJ 1; [2015] 8 CLJ 944; [2018] 3 AMR 259, FC (folld)

Tengku Korish v Mohamed bin Jusoh & Anor [1970] 1 MLJ 6; [1969] 1 LNS 189 (refd)

Ustaz Akmal bin Hj Kamaruddin v Dato Mohamad Daud bin Mohd Yusoff & Anor [2014] 9 MLJ 841; [2013] 5 AMR 827; [2013] 9 CLJ 924, HC (refd)

WT Ramsay Ltd v Inland Revenue Commissioners; Eilbeck (Inspector of Taxes) v

Rawling [1982] AC 300, HL (refd)
Wan Sagar bin Wan Embong v Harun bin Taib [2008] 6 MLJ 473; [2009] 1 CLJ 457; [2008] 5 AMR 783, FC (refd)
Wong Sing Nang v Tiong Thai King [1996] 4 MLJ 261; [1996] 1 AMR 1044; [1996] 1 LNS 66, HC (refd)

Legislation referred to

Election Offences Act 1954 ss 10, 10(a), (c), (e), 11(1)(b), 32, 32(a), (b), (c), 34(a), 38(1), (1)(a), 42(1), Second Schedule
Election Petition Rules 1954 rr 4(1), (1)(a), (1)(b), 9
Evidence Act 1950 ss 101, 103
Federal Constitution art 118
Interpretation Acts 1948 and 1967 s 17A
Palm Oil (Research Cess) Order 1979
Palm Oil Research and Development Act 1979
Stamp Act 1949 s 4, First Schedule, items 4, 38, 59

Mohd Hafarizam bin Harun (with Norhazira bt Abu Haiyan and Muhammad Amin bin Othman) (Hafarizam Wan & Aisha Mubarak) for the petitioner.
Takiyuddin bin Hassan (with Yusfarizal bin Yusoff, Wan Rohimi bin Wan Daud, Mohd Faizi bin Che Abu, Nurul Atiqah bt Badrul Hisham, Wan Nur Amira bt Wan Abdul Manan and Ahmad Lutfi bin Awang) (Tengku Amalin & Faizi) for the respondent.

Faizah Jamaludin J:

INTRODUCTION

[1] This is my judgment in respect of the election petition ('EP') filed by the petitioner, Ahmad Faisal bin Abdul Karim, challenging the election of the respondent, Mohd Radzi bin Md Jidin, as the Member of Parliament of the Parliamentary seat of P.125 Putrajaya.

[2] The respondent was the Perikatan Nasional ('PN') candidate in the Parliamentary seat of P.125 Putrajaya contested in the 15th General Election ('GE-15'), which took place on 15 November 2022 (early voting) and 19 November 2022 (polling day). The respondent had won the election by a majority of 2,310 votes and was returned as the duly elected Member of Parliament for the Parliamentary seat of P.125 Putrajaya by the Returning Officer on 19 November 2022.

[3] The petitioner was a voter at the election to which the EP relates and the election agent for one of the unsuccessful candidates — Tengku Adnan bin Tengku Mansur, who was the candidate for Barisan Nasional ('BN') and the incumbent Member of Parliament for P.125 Putrajaya.

[4] In the EP, the petitioner seeks to avoid the election of the respondent under s 32(c) of the Election Offences Act 1954 ('Act 5'). He alleged that a corrupt practice, specifically the payment of money in the sum of RM150 to voters, was committed in connection with the election by the respondent or by his agent. He prayed for the following reliefs:

(a) a declaration that the respondent was not duly elected or ought to have been returned on 19 November 2022 as the Member of Parliament for the Parliamentary seat of P.125 Putrajaya in the GE-15; and

(b) a declaration that the election for the Parliamentary seat for P.125 Putrajaya is void.

[5] The respondent raised a preliminary objection against the EP based on the following grounds:

(a) the petitioner failed to comply with r 4(1)(b) of the Election Petition Rules 1954 ('EP Rules'), in that he failed to briefly state the facts and grounds relied on to sustain his allegation of corrupt practice under s 32(c) of Act 5;

(b) the petitioner failed to plead the facts showing that the alleged payment of money was 'in connection with the election' so as to enable him to file the EP within 28 days from the date of the alleged payment of money under the proviso in s 38(1) of Act 5; and

(c) the appointment of the petitioner's advocate did not comply with the mandatory provisions in r 9 of the EP Rules because the notice of appointment of advocate was not stamped.

[6] For the reasons set out in this judgment, I allowed the respondent's preliminary objection. I found that the EP did not comply with r 4(1)(b) of the EP Rules and had, accordingly, struck it out.

ANALYSIS

[7] The petitioner had filed the EP on 26 January 2023, which was 22 days from the date he alleged that a PN party worker had paid the sum of RM150 to a voter by the name of Najmi Azamuddin bin Abdul Abas. The EP was filed pursuant to the proviso in s 38(1)(a) of Act 5, which allows an election petition to be filed within 28 days after the payment of a bribe instead of within 21 days of the publication of the election results in the *Gazette*. The proviso in s 38(1)(a) reads:

> 38 Time for presentation
>
> (1) Every election petition shall be presented within twenty-one days of the date of publication of the result of the election in the Gazette:

Provided that —

(a) *an election petition questioning the return or the election upon the ground of a corrupt practice and specifically alleging a payment of money* or other act to have been made or done since the date aforesaid by the person whose election is questioned or by an agent of the person or with the privity of the person or his election agent in pursuance or in furtherance of such corrupt practice *may, so far as respects such corrupt practice, be presented at any time within twenty-eight days after the date of such payment or act;* (Emphasis added.)

[8] Under Act 5, a person seeking to challenge the results of an election may only do so by way of an election petition and only on one or more of the five grounds stipulated in s 32 of Act 5. Section 32(c) is one of those grounds. It reads:

32 Avoidance of election on election petition

The election of a candidate at any election shall be declared to be void on an election petition on any of the following grounds only which may be proved to the satisfaction of the Election Judge:

...

(c) that a corrupt practice or illegal practice was committed in connection with the election by the candidate or with his knowledge or consent, or by any agent of the candidate;

[9] Section 11(1)(b) of Act 5 states that every person who commits the offence of bribery shall be guilty of 'corrupt practice'. Section 10 of Act 5 lists the types of actions, which if committed by any person, would deem that person guilty of the offence of bribery under the Act. Section 10(a), (c), and (e) of Act 5 state:

10 Bribery

The following persons shall be deemed guilty of the offence of bribery:

(a) every person who, *before, during or after an election*, who directly or indirectly, by himself or by any other person on his behalf, *gives, lends, or agrees to give or lend, or offers, promises, or promises to procure or to endeavour to procure*, *any money or valuable consideration* to or for any elector or voter, or to or for any person on behalf of any elector or voter or to or for any other person, in order *to induce any elector or voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of such elector or voter having voted or refrained from voting at any election*

...

(c) every person who, *before, during or after an election*, directly or indirectly, by himself or by any other person on his behalf, *makes any such gift, loan, offer, promise, procurement, or agreement* as aforesaid to or for any person in order *to induce such person to procure or endeavour to procure the election of any person, or the vote of any elector or voter at any election*

A ...

(e) every person who, either *before, or during an election*, *advances or pays or causes to be paid any money* to, or to the use of, any other person *with the intent that such money or any part thereof shall be expended in bribery at any election* or who knowingly pays or causes to be paid any money to any person in discharge or repayment of any
B money wholly or in part expended in bribery at any such election; (Emphasis added.)

BURDEN OF PROOF

C **[10]** In the EP, the petitioner is seeking for declarations that the election of the respondent is void and that the respondent was not duly elected or ought to have been returned as the Member of Parliament for the Parliamentary seat of P.125 Putrajaya in the GE-15.

D **[11]** For an election judge to declare the election of a candidate in any election as void under s 32(c) of Act 5, the petitioner must prove to the satisfaction of the election judge 'that a corrupt practice had been committed, in connection with the election, by the respondent or with his knowledge or consent, or by his agent'.

E

[12] Pursuant to ss 101 and 103 of the Evidence Act 1950, the burden of proof lies on the petitioner to prove the facts alleged against the respondent exist, namely that the alleged corrupt practice was committed by the respondent, or with his knowledge or consent, or by his agent. Sections 101
F and 103 of the Evidence Act read:

101 Burden of Proof

(1) Whoever desires any court to give judgment as to any legal right or liability, dependent on the existence of facts which he asserts, must prove
G that those facts exist.

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

...

H *103 Burden of Proof as to particular fact*

The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

I **[13]** In *Audrey Karen Barry v Datuk Dr Yee Moh Chai* [2009] 3 MLJ 141; [2010] 3 CLJ 660, the Federal Court held that the burden of proof under s 32(a), (b) and/or (c) of Act 5 is on the petitioner to establish a prima facie case before the respondent is required to answer, which is in line with s 103 of the Evidence Act 1950.

STANDARD OF PROOF

[14] The applicable standard of proof for corrupt practice in an election of a candidate is beyond reasonable doubt.

[15] In *Ali Amberan v Tunku Abdullah* [1970] 4 MC 113; [1969] 1 LNS 6, Raja Azlan Shah J (as HRH then was) held:

> Now an allegation of corrupt practice is of a quasi-criminal nature in as much as a finding of corrupt practice entails penal consequences. *The onus is on the petitioner to prove it beyond reasonable doubt by evidence which is clear and unambiguous.* (Emphasis added.)

[16] In *Gurdial Singh Nijar v KS Balakrishnan* [1993] 2 CLJ 75; [1993] 1 AMR 379, Mohd Noor Ahmad J (as he then was) held:

> The onus is on the petitioner to prove corrupt practice *viz* bribery beyond reasonable doubt by evidence which is clear, unequivocal and unambiguous.

[17] Ariffin Zakaria CJ (Malaya) (as he then was) delivering the judgment of the Federal Court in *Audrey Karen Barry* cited with approval the decisions in *Ali Amberan v Tunku Abdullah* and *Wong Sing Nang v Tiong Thai King* [1996] 4 MLJ 261; [1996] 1 AMR 1044; [1996] 1 LNS 66, and held that the standard of proof for an allegation of corrupt practice in an election petition is beyond reasonable doubt.

ELECTION PETITIONS

[18] An election to a Parliamentary or a State Assembly seat may only be questioned by an election petition presented to the High Court having jurisdiction where the election was held. Article 118 of the Federal Constitution states:

> No election to the House of Representatives or the House of Assembly of a State shall be called in question except by an election petition presented to the High Court having jurisdiction where the election was held.

[19] Election petitions are governed by Act 5. It is settled law that:

(a) the statutory requirements in Act 5 are mandatory and must be strictly observed;

(b) the presentation of election petitions is not a civil right;

(c) an election judge hearing an election petition is not permitted to go outside the province of the election law and the remedy provided under Act 5: see *Tengku Korish v Mohamed bin Jusoh & Anor* [1970] 1 MLJ 6; [1969] 1 LNS 189; and

(d) an election judge is constrained by the powers which are expressly vested in him by Act 5. He has no jurisdiction to hear and determine a defective election petition: see *Mohd Zaid bin Ibrahim v P Kamalanathan a/l P Panchanathan & Ors* [2010] 6 MLJ 363; [2010] 8 CLJ 608; [2010] 5 AMR 556.

[20] Section 42(1) of Act 5 expressly states that the procedure and practice of election petitions are regulated by the EP Rules as provided in the Second Schedule of Act 5.

[21] The EP Rules, among others, regulate the contents and form of an election petition. Rule 4(1) of the EP Rules states:

> *4 Contents and form of election petition*
>
> (1) An election petition *shall* contain the following statements;
>
> (a) it shall state the right of the petitioner to petition within section 34 of the Act; and
>
> (b) it shall state the holding and result of the election, and *shall briefly state the facts and grounds relied on to sustain the prayer*. (Emphasis added.)

[22] The petitioner had voted during the election, which he is now seeking to challenge through the EP. As a voter, he has the right to present the EP under s 34(a) of Act 5. In compliance with r 4(1)(a) of the EP Rules, the petitioner had stated in para 1 of the EP that he has the right to present the EP to the High Court.

[23] He is also required by r 4(1)(b) of the EP Rules, to briefly state the facts and grounds relied on to sustain the prayers in the EP. The respondent contends that the petitioner had failed to do so.

[24] The Federal Court in *Gan Joon Zin v Fong Kui Lun & Ors* [2004] 4 CLJ 729; [2004] 6 AMR 590 ('Gan Joon Zin') and in *Mahari bin Endut v Dato' Hj Mat Razali bin Kassim & Ors* [2009] 5 MLJ 153; [2009] 4 CLJ 488; [2009] AMR 793 ('Mahari bin Endut') held that non-compliance of pleadings and procedures stipulated in the EP Rules would result in a jurisdictional defect depriving the election judge of the jurisdiction to hear the petition. Richard Malanjum CJ (Sabah and Sarawak) (as he then was) delivering the judgment of the Federal Court in *Mahari bin Endut* held:

> [16] In election cases the principles on pleadings are well settled. *Strict compliance with the provisions of the Act 5, regulations and/or Rules is required otherwise any election petition would be rendered defective and liable to be struck out in limine*. Thus, under r 4(1)(b) of the Election Petition Rules 1954 ('the Petition Rules 1954') *it is mandatory that an election petition shall state briefly the facts and grounds relied upon to sustain the prayers sought for*. The rationale for this strict requirement is that the

'the right conferred by that Act is a special kind of right unknown to the common law or equity, and the court which administers it possesses a special kind of jurisdiction ... It is not a civil right but a creature of statute or special law and must be subject to the limitations imposed by it ... (Emphasis added.)

[25] The Federal Court in *Khairuddin bin Abu Hassan v Datuk Seri Haji Ahmad Hamzah & Ors and another appeal* [2019] MLJU 2177; [2019] 9 CLJ 315; [2020] 1 AMR 141 ('Khairuddin Abu Hasan') reiterated the legal principle that statutory requirements of elections laws are mandatory and must be strictly observed. It held that the petitioner must not only narrate the facts complained of, but he must also relate or associate the complaints with the provision of the election laws that he alleged had been transgressed. Delivering the judgment of the Federal Court, Tengku Maimun Tuan Mat FCJ (as she then was) said:

[45] *It is trite that the statutory requirements of election laws are mandatory and must be strictly observed, failing which the petition may be rendered defective and may be dismissed without going for trial* ... The raison d'être for this was explained in *Dr Lee Chong Meng v Returning Officer (Abdul Rahman Abdullah) & Ors (No 2)* [2000] 6 MLJ 98; [2000] 3 CLJ 532:

> The statutory requirements of an election must be strictly observed because an election dispute is a statutory proceeding unknown to the common law or equity.

[46] *Thus, for the petitioner to succeed in his election petition, the petitioner must briefly plead the facts and grounds of any non-adherence or offences alleged to have been committed.*

...

[49] *A petition, therefore, must not only narrate the facts complained of but must also relate or associate the complaints with the provision of election laws alleged to have been transgressed* (see *Wan Sagar Wan Embong v Harun Taib (No 2)* [2008] 6 MLJ 473; [2009] 1 CLJ 457 and *Gan Joon Zin v Fong Kui Lun & Ors* [2004] 4 CLJ 729). (Emphasis added.)

[26] In *Mohd Nazri bin Hj Din v Dato' Seri Raja Ahmad Zainuddin bin Raja Hj Omar & Ors* [2009] 3 MLJ 589; [2009] 3 CLJ 221; [2009] 6 AMR 97 ('Mohd Nazri'), the Federal Court held that for a petitioner to sustain an election petition under s 32(a) and (c) of Act 5, the material facts that must be pleaded are the elements that constitute the offence of bribery in question.

[27] Accordingly, in this EP, for the petitioner to sustain his prayer under s 32(c) of Act 5, namely, that a corrupt practice, specifically the payment of the sum of RM150 to voters in connection with the election, was committed by the respondent or by his agent, he must plead sufficient facts to constitute a cause of action for corrupt practice and bribery.

ALLEGATION OF BRIBERY UNDER S 10(A) AND/OR (C) OF ACT 5

[28] The petitioner had pleaded in para 4.1 and 4.2 of the EP that the respondent directly and through his agent had paid or offered money or valuable consideration to electors and voters after the GE-15, in order to induce any elector or voter to vote for the respondent or refrain from voting for the other candidates for the Parliamentary seat, in contravention of s 10(a) and/or (c) of Act 5. Paras 4.1 and 4.2 of the EP are reproduced below:

4.1 Penyogokan pemilih atau pengundi oleh Responden:

(a) kesalahan *menyogok*, inter alia, bertentangan dengan Seksyen 10(a) and/atau (c) Akta 5 dan boleh dihukum di bawah Seksyen 11(1)(b) Akta 5, *oleh Responden secara langsung dengan sendiri* selepas PRU-15, *memberikan wang atau balasan bernilai* kepada pemilih atau pengundi, bagi mendorong mana-mana pemilih atau pengundi supaya mengundi Responden atau tidak mengundi calon-calon dalam Bahagian Pilihan Raya tersebut;

(b) kesalahan *menyogok*, inter alia, bertentangan dengan Seksyen 10(a) and/atau (c) Akta 5 dan boleh dihukum di bawah Seksyen 11(1)(b) Akta 5, *oleh Responden secara langsung dengan sendiri*, selepas PRU-15, *menawarkan wang atau balasan bernilai* kepada pemilih atau pengundi, bagi mendorong mana-mana pemilih atau pengundi supaya mengundi Responden atau tidak mengundi calon-calon dalam Bahagian Pilihan Raya tersebut;

4.2 Penyogokan pemilih atau pengundi oleh ejen Responden:

(a) kesalahan *menyogok*, inter alia, bertentangan dengan Seksyen 10(a) and/atau (c) Akta 5, dan boleh dihukum di bawah Seksyen 11(1)(b) Akta 5, *oleh Responden, secara tidak langsung melalui ejen*, selepas PRU-15 *memberikan wang atau balasan bernilai* kepada pemilih atau pengundi, bagi mendorong mana-mana pemilih atau pengundi supaya mengundi Responden atau tidak mengundi calon-calon dalam Bahagian Pilihan Raya tersebut;

(b) kesalahan *menyogok*, inter alia, bertentangan dengan Seksyen 10(a) and/atau (c) Akta 5 dan boleh dihukum di bawah Seksyen 11(1)(b) Akta 5, *oleh Responden, secara tidak langsung melalui ejen*, selepas PRU-15 *menawarkan wang atau balasan bernilai* kepada pemilih atau pengundi, bagi mendorong mana-mana pemilih atau pengundi supaya mengundi Responden atau tidak mengundi calon-calon dalam Bahagian Pilihan Raya tersebut;

[29] In para 4.1(a) of the EP, the petitioner had pleaded that, after the GE-15, *the respondent had personally given money or valuable consideration to electors or voters* to induce any elector or voter to vote for the respondent or refrain from voting any other candidate in the said Parliamentary seat. And in para 4.1(b) of the EP, the petitioner had alleged that, after the GE-15, *the*

respondent had personally offered money or valuable consideration to electors or voters to induce any elector or voter to vote for the respondent or refrain from voting any other candidate in the said Parliamentary seat.

[30] In para 4.2(a) of the EP, the petitioner had pleaded that, after the GE-15, *the respondent had indirectly through his agent, given money or valuable consideration to electors or voters* to induce any elector or voter to vote for the respondent or refrain from voting any other candidate in the said Parliamentary seat. And in para 4.2(b) of the EP, the petitioner had alleged that, after the GE-15, *the respondent had indirectly through his agent, offered money or valuable consideration* to electors or voters to induce any elector or voter to vote for the respondent or refrain from voting any other candidate in the said Parliamentary seat.

ALLEGATION OF BRIBERY UNDER S 10(e) OF THE EP

[31] In para 4.3 of the EP, the petitioner had pleaded that in contravention of s 10(e) of Act 5, the respondent through his agent had, *after the GE-15*, expended monies or valuable consideration, to electors or voter to induce any elector or voter to vote for the respondent or refrain from voting the other candidates for the parliamentary seat. Paragraph 4.3 of the EP is reproduced below:

> 4.3 Penyogokan pemilih atau pengundi oleh ejen Responden:
>
> (a) kesalahan menyogok, inter alia, bertentangan dengan Seksyen 10(e) Akta 5 dan boleh dihukum di bawah Seksyen 11(1)(b) Akta 5, oleh Responden, *selepas PRU-15* melalui ejen kepada Responden, membelanjakan wang atau balasan bernilai kepada pemilih atau pengundi, bagi mendorong mana-mana pemilih atau pengundi supaya mengundi Responden atau tidak mengundi calon-calon dalam Bahagian Pilihan Raya tersebut; (Emphasis added.)

[32] Section 10(e) of Act 5 expressly states that for a person to be guilty of an offence of bribery under the said section, the person must have either *before or during an election*, advanced or paid any money for such monies to be expended in bribery. Section 10(e) reads:

> 10 Bribery
>
> The following persons shall be deemed guilty of the offence of bribery:
>
> ...
>
> (e) every person who, either *before, or during an election*, advances or pays or causes to be paid *any money* to, or to the use of, any other person with the intent that such money or any part thereof shall be expended in bribery at any election or who knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any such election; (Emphasis added.)

[33] The petitioner had pleaded in para 4.3 of the EP that the respondent had *after the GE-15*, through his agent had expended money or valuable consideration to electors or voter to induce any of them to vote for him or refrain from voting for the other candidates. For the alleged payment of money to the electors or voters to fall under s 10(e) of Act 5, the petitioner must prove beyond reasonable doubt that the money was paid *before or during the GE-15*. By pleading that the alleged money had been expended after the GE-15, it means that the alleged act does not fall within s 10(e) of Act 5. Accordingly, for this reason alone para 4.3 of the EP must be struck out.

SUFFICIENT FACTS OF CORRUPT PRACTICE MUST BE PLEADED IN THE EP

[34] The Federal Court *Wan Sagar bin Wan Embong v Harun bin Taib* [2008] 6 MLJ 473; [2009] 1 CLJ 457; [2008] 5 AMR 783 ('Wan Sagar') held that the appellant petitioner in that case must plead sufficient facts and grounds to indicate that the corrupt practice under s 32(c) of Act 5 was committed by the first respondent or with his knowledge or consent or by his agent. Zulkefli Makinuddin FCJ (as he then was) delivering the judgment of the Federal Court said:

> [20] ... We are of the view it is of vital importance that the petition must disclose a cause of action. *The pleading must state a concise statement of material facts and the fullest possible particulars*. The function of particulars is to present a full picture of the cause of action in order to make the opposite party understand the case he will have to meet. *We have to also state here that since the pleading in relation to s 32(c) of the EOA concerns 'corrupt practice' the requirements of pleadings are strict*. In the case of *Laxmi Narayan Nayak v Ramratan Chaturvedi* [1990] 2 SCC 173 the court emphasised that the allegation of corrupt practices should not be vague. In the case of *Azhar Hussain v Rajiv Gandhi* AIR [1986] Vol 73 SC on this same point at pp 1258 to 1259 the court, inter alia, held as follows:
>
> > *In the context of a charge of corrupt practice it would mean that the basic facts which constitute the ingredients of the particular corrupt practice alleged by the petitioner must be specified in order to succeed on the charge*.
> >
> > ...
>
> *All the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of* s 83(1)(a). An election petition therefore can be and must be dismissed if it suffers from any such vice. (Emphasis added.)

[35] Accordingly, for the petitioner to sustain a cause of action of corrupt practice under s 32(c) of Act 5, specifically the alleged bribery under s 10(a) and/or (c), the petitioner must plead the basic facts that constitute the ingredients of bribery under s 10(a) and (c). They should, at the very least, include facts that:

(a) the respondent had personally given and/or offered money or valuable consideration;

(b) the respondent's agent had given and/or offered money or valuable consideration;

(c) if money was paid and/or offered by either the respondent and/or his agent — how much money was paid or offered to each elector and/or voter, and when after GE-15 and where was the money given or offered to the said electors and/or voters;

(d) if valuable consideration was given — what was the valuable consideration, and when and where was the valuable consideration given;

(e) the names of each of the persons to whom the monies were paid and/or offered;

(f) the names of each of the persons to whom the valuable consideration was given and/or offered;

(g) that the persons who were paid and/or offered the monies or valuable consideration were on the electoral role of the Parliamentary seat of P.125 Putrajaya during GE15; and

(h) the respondent's intention for offering or giving the monies and/or valuable consideration, either personally or through his agent, was to induce the electors or voters to vote for the respondent or to refrain from voting any other candidate in the Parliamentary seat of P.125 Putrajaya during GE15.

[36] Furthermore, the law is settled that parties are bound by their pleadings and that they are not allowed to adduce facts and pleadings that are not pleaded: see *Samuel Naik Siang Ting v Public Bank Bhd* [2015] 6 MLJ 1; [2015] 8 CLJ 944; [2018] 3 AMR 259, FC ('Samuel Naik'). Ramly Ali FCJ delivering the judgment of the Federal Court held:

> [29] *It is a cardinal rule in civil litigation that parties are bound by their pleadings and are not allowed to adduce facts and issues which they have not pleaded* (see: *State Government of Perak v Muniandy* [1986] 1 MLJ 490; [1985] 1 LNS 117 and *Anuar Mat Amin v Abdullah Mohd Zain* [1989] 3 MLJ 313; [1989] 1 LNS 74). In *Blay v Pollard & Morris* [1930] 1 KB 628, Scrutton LJ ruled that: 'Cases must be decided on the issues on the record; and if it is desired to raise other issues there must be pleaded on the record by amendment'.
>
> [30] The Supreme Court in *Lee Ah Chor v Southern Bank Bhd* [1991] 1 MLJ 428; [1991] 1 CLJ 667; [1991] 1 CLJ Rep 239, had also emphasised the importance of pleadings and ruled that *where a vital issue was not raised in the pleadings it could not be allowed to be argued and to succeed on appeal* (see also *Ambank (M) Bhd v Luqman Kamil Mohammed Don* [2012] MLJU 56; [2012] 3 CLJ 551 FC).

[37] Accordingly, per the Federal Court's decision in *Samuel Naik*, the petitioner is not allowed to adduce any evidence relating to facts that were not pleaded in the EP, during the hearing of the petition.

[38] More fundamentally, under the election laws, by failing to briefly plead these facts in the EP, the petitioner is in non-compliance with r 4(1)(b) of the EP Rules. As held by the Federal Court in *Khairuddin Abu Hasan*:

> A petition must not only narrate the facts complained of but must also relate or associate the complaints with the provision of the election laws alleged to have been transgressed.

[39] In *Ustaz Akmal bin Hj Kamaruddin v Dato Mohamad Daud bin Mohd Yusoff & Anor* [2014] 9 MLJ 841; [2013] 5 AMR 827; [2013] 9 CLJ 924 ('Ustaz Akmal'), Abdul Rahman Sebli J (as he then was) held that in an election petition, any allegation of bribery, general or specific, must be stated with clarity and certainty. And that the facts pleaded must be such that, if established by *viva voce* evidence, would be sufficient to prove to the satisfaction of the election judge that the offence of corrupt practice had been committed beyond any reasonable doubt.

[40] In this EP, the petitioner had pleaded the following facts:

(a) on 21 November 2022:

(i) a user of the WhatsApp application by the name of 'ZettyAkhma', posted on the WhatsApp Group 'Alumni SMK P9(1)' the query whether 'pengundi luar alamat bertukar' can get a 'bonus' for voting at 'Presint 11(1) Putrajaya';

(ii) that another user of the WhatsApp application in the WhatsApp Group 'Alumni SMK P9(1)' by the name of 'Mohd Mustaqim' had replied 'ZettyAkhma''s query stating 'depa kata dapat'; and

(iii) that 'Mohd Mustaqim' shared a screenshot by a WhatsApp user by the name of 'Ezham' in reply to the query of another WhatsApp user by the name of 'Izwan' who had asked 'nak tanya claim pengundi luar bila boleh dapat?', had stated 'Baru settle list. InsyaAllah dua tiga hari lagi diorang akan call'.

(b) a month later, on 21 December 2022:

(i) a user of the WhatsApp application by the name of 'Anna', posted on the WhatsApp Group 'Alumni SMK P9(1)' the query 'Salam Korang. Maaf nak tanya, dalam ni, ada yg pengundi dari luar kawasan Putrajaya tak? Ada terima imbuhan apa? #saja tanya';

(ii) that another user of the WhatsApp application in the WhatsApp

Group 'Alumni SMK P9(1)' by the name of 'Rezeki dari Allah' replied 'Anna's' message stating 'Wslm. Ada. Dpt Rm150';

(iii) the user by the name of 'Mohd Mustaqim' forwarded a voice message in the 'Alumni SMK P9(1)' WhatsApp Group with the comment 'ni penerangan untuk pengundi luar';

(iv) another user by the name of 'Zulnaim' queried 'Boleh claim lagi ke duit tu' and the user named 'Anna' asked 'Ni rakam bila';

(v) the user by the name of 'Rezeki dari Allah' replied to a query by one of the users by the name of 'TT United Wan Rooney' stating 'Bole g pjbt ahli parlimen Putrajaya tuntut'; and

(vi) the user by the name of 'Anna' asked 'Sape yg hantar voice tu? Mesti orang dlm parti';

(c) on 4 January 2023, a registered elector or voter by name of Najmi Azamuddin Bin Abdul Abas ('Najmi') who is a WhatsApp user in the WhatsApp Group 'Alumni SMK P9(1)', had received a bribe in the sum of RM150 from a PN party worker 'sebagai balasan apabila mengundi Responden semasa PRU-15'; and

(d) there are some other voters in the said electoral constituency who were also bribed with money for the sake of getting votes for the respondent. The original Bahasa Malaysia pleadings in para 6.12 of EP is reproduced below:

> Terdapat juga beberapa pengundi yang lain yang mengundi di dalam Bahagian Pilihan Raya tersebut yang juga telah disogok dengan wang demi untuk mendapatkan undi kepada Responden.

[41] The petitioner did not plead in the EP that the WhatsApp users 'ZettyAkhma', 'Mohd Mustaqim', 'Anna', 'Rezeki dari Allah', 'Zulnaim' and 'TT United Wan Rooney' in the WhatsApp Group 'Alumni SMK P9(1)' were on the electoral roll of the P.125 Putrajaya constituency. He also did not plead whether any or all of these WhatsApp users had received or were offered the sum of RM150 from either the respondent or the respondent's agent. Neither did he plead on what date after the GE15 and where did these WhatsApp users received or were offered the money. Nor did he plead whether it was the respondent or his agent who had given or offered any or all of these WhatsApp users the sum of RM150 after the GE-15, in order to induce them to vote for the respondent or refrain from voting for the other candidates during the GE-15.

[42] As regards the allegation that the money was given to Najmi by a PN party worker, to make a prima facie case under s 32(c) of Act 5 against the respondent, the petitioner must plead that the corrupt practice was committed

in connection with the election by the respondent or with the respondent's knowledge or consent, or by his agent, and that the bribe was given to induce Najmi to vote for the respondent or to refrain from voting for the other candidates for the Parliamentary seat of P.125 Putrajaya during the GE15. the petitioner must also state the location or place where the sum of RM150 was allegedly paid to Najmi.

[43] Additionally, the petitioner must state in that the PN party worker who had allegedly paid the RM150 to Najmi was acting as an agent of the respondent. It is imperative that he plead an element of appointment of the PN party by the respondent and a nexus or connection between the party worker and the respondent as the candidate for the said Parliamentary seat. In *Wan Sagar bin Wan Embong v Harun bin Taib*, the Federal Court held:

> [21] ... With respect, we find the pleading in the petition filed by the appellant on agency rests on mere conjecture. Although the principles applicable in Election Law are wider, we are of the view the principles should not be so extended as to cast the net of agency too wide to include even ordinary party supporters. The principles as laid down in the case of *Ali Amberan v Tunku Abdullah* [1970] 2 MLJ 15b; [1969] 1 LNS 6 do not extend that far. Quoting *Taunton*'s case, Raja Azlan Shah J (His Royal Highness as he then was) approved the passage in the judgment reading it as follows:
>
> > The rule of Law has long been established that in parliamentary matters we are not to consider the strict rule of common law agency ... *it has long been established that where a person has employed an agent for the purpose of procuring his election*, he, the candidate, is responsible for the act of that agent in committing corruption, though himself not only did not intend it but even bona fide did his best to hinder it. (Emphasis added.)
>
> [22] *On the strength of the above authority it is our judgment that there has to be an element of 'appointment' wherein there is a nexus or connection between the named or identified persons alleged to be the 'agents' and the first respondent as the candidate. The appellant has to plead this to allow the first respondent to meet the case.* This element of 'appointment' is present in the statement of the law as defined by Raja Azlan Shah J (His Royal Highness as he then was) in the case of *Ali Amberan* .... (Emphasis added.)

[44] As is evident from a perusal of the EP, the petitioner did not plead any of these facts to support his allegation of bribery vis a vis Najmi.

[45] As for the 'beberapa pengundi lain' pleaded in para 6.12 of the EP, the petitioner did not plead:

(a) the names of any of these voters who 'telah disogok dengan wang';

(b) whether 'disogok dengan wang' means received or offered the monies;

(c) how much was the monies 'yang telah disogok' to these unnamed voters;

(d) who had 'sogok' these voters 'dengan wang' — was it the respondent himself or his agent or agents;

(e) if it was the respondent's agent or agents, who had 'sogok' these unnamed voters 'dengan wang' — what are the name or names of the agent or agents, as the case may be;

(f) the date or dates on which these unnamed voters 'telah disogok dengan wang'; and

(g) the place or places where these unnamed voters 'telah disogok dengan wang'.

[46] The facts pleaded in relation to the 'beberapa pengundi lain' is not unlike the scenario in *Re Pengkalan Kota By-election Teoh Teik Huat v Lim Kean Siew & Anor* [1981] 1 MLJ 265; [1981] 1 LNS 1, which compelled Eusoffe Abdoolcader J (as he then was) to remark:

> There is no such specific or identifiable particularity in this case but only an allegation of an address to a faceless and amorphous crowd of somewhat uncanalised fluidity of over 1,500 people said to have been largely comprised of electors or voters and people of the constituency.

[47] Learned counsel for the petitioner, Dato Wira Mohd Hafarizam bin Harun, had submitted that the pleadings in para 8 of the EP read together para 4 of the EP were the brief facts that the respondent or with his knowledge or consent, or by his agent had bribed the voters to induce the voters of the Parliamentary seat to vote for the respondent during the GE15 and not the other candidates.

[48] With respect to learned counsel for the petitioner, I cannot agree with his submission. From its natural and ordinary meaning, the pleading in para 4 is a statement that under s 32(c) of Act 5, a bribery or a corrupt practice had been committed in connection with the GE15 by the respondent or with his knowledge or consent or by any of the respondent's agents, the details of which will be stated in the EP. I find that para 4 does not, briefly or otherwise, state the facts and/or grounds relied on by the petitioner to sustain his allegation of corrupt practice and/or bribery.

[49] Similarly, the pleading in para 8 does not briefly state the facts and/or grounds relied on by the petitioner to support his case. It is, instead, a catch-all statement that the bribery committed by the respondent's agents had induced the voters in the said Parliamentary seat to vote for the respondent during the GE15 and not the other candidates who had contested in the said Parliamentary seat.

[50] I find that there are insufficient facts pleaded in para 4 or para 8 that would enable the petitioner, in accordance with the laws of evidence and rules of pleadings enumerated by the Federal Court in *Samuel Naik*, to adduce the requisite evidence to support his contention that a corrupt practice, specifically the payment of the sum of RM150 to voters after the GE15, was committed with the election, by the respondent or with his knowledge or consent, or by the respondent's agent.

[51] It follows, therefore, since the petitioner is not permitted by law to adduce all the necessary evidence during the hearing of the EP because he did not plead the relevant facts, he would not be able to make a prima facie case and/or prove beyond reasonable doubt that the respondent or his agent had committed a corrupt practice during the election. As Abdul Rahman Sebli J (as he then was) in *Ustaz Akmal* remarked:

> [14] It is trite law that an election petition without the material facts relating to corrupt practice is no election petition at all ....

[52] Accordingly, for the reasons above, I find that the pleadings in the EP lack the necessary facts and particulars to sustain a cause of action of corrupt practice under s 32(c) of Act 5 against the respondent. To paraphrase VT Singham J's dicta in *Dr Shafie bin Abu Bakar lwn Pegawai Pengurus Pilihan Raya No 26 Bangi — Mohd Zakri bin Hj Hussin & lain-lain (No 1)* [2005] 2 MLJ 191; [2005] 5 CLJ 349; [2005] 3 AMR 281, the petitioner had failed to plead in the EP 'the gravamen of the charge with exactitude and precision'.

[53] I further find that because of the dearth of material facts pleaded, the EP had not complied with r 4(1)(b) of the EP Rules and is therefore, defective.

[54] As an election judge, I am constrained by the powers expressly vested in me by Act 5. The petitioner's failure to comply with the pleadings and procedures for election petitions stipulated in r 4(1)(b) of the EP Rules has resulted in a jurisdictional defect, which deprives me of the jurisdiction to hear the EP. Accordingly, the EP should for this reason be struck out.

PRELIMINARY OBJECTION TO NOTICE OF APPOINTMENT OF ADVOCATE

[55] The respondent had also objected against the EP because the petitioner's notice of appointment of advocates was not stamped. Learned counsel for the respondent, Encik Yusfarizal bin Yussoff submitted that the said notice of appointment must be stamped because r 9 of the Election Petition Rules state the notice of appointment of advocates 'shall be stamped with the duty payable thereon under the law for the being in force'.

[56] Encik Yusfarizal in his submissions had sought to persuade me that the notice of appointment of advocate falls within the definition of an 'agreement or memorandum of agreement' under item 4, or a 'deed' under item 38, or a 'power or letter of attorney' under item 59 of the First Schedule of the Stamp Act 1949. He also argued that stamp duty is payable on the notice of appointment of advocate because the Controller of Stamp Duty had previously accepted payment of duty on such notices.

[57] The law for the time being in force in respect of stamp duties is the Stamp Act 1949 (the 'Stamp Act'). Section 4 of the Stamp Act 1949 states that the instruments specified in the First Schedule of the Act shall be chargeable with the duties specified in the said Schedule. The First Schedule of the Stamp Act lists all the instruments that are chargeable with duty.

[58] The Federal Court in *Palm Oil Research and Development Board Malaysia & Anor v Premium Vegetable Oils Sdn Bhd & Another Appeal* [2005] 3 MLJ 97; [2004] 2 CLJ 265; [2003-2005] AMTC 85 ('Palm Oil Research and Development Board Malaysia & Anor'), cited with approval the test formulated by Lord Thankerton in the Privy Council' judgment in *Lower Mainland Dairy Products Sales Adjustment Committee v Crystal Dairy Ltd* [1933] AC 168 ('the Thankerton test') and held that a particular written law is a taxing statute where the taxes, levies or duties imposed under the said written law are: (i) compulsorily imposed; and (ii) they are enforceable by law.

[59] The Stamp Act compulsorily imposes duties on instruments specified in the First Schedule of the Act. Payment of these duties is enforceable by law. Accordingly, I find that based on the *Thankerton* test, the Stamp Act is a taxing statute.

[60] It is a fundamental principle of law that taxes or duties cannot be imposed on a subject without clear words in any written law, and taxing statutes must be construed in accordance with this principle. In *Comptroller-General of Inland Revenue, Malaysia v T* [1970] 2 MLJ 35; [1969] 1 LNS 31, Gill FJ said:

> In the absence of a clear intention that tax should be imposed, the respondent is not liable to payment for the sum granted for the abrogation of his contract. *It is an important canon in the construction of revenue Acts that the subject is not to be taxed unless there are clear words in the Act imposing such a tax.* (Emphasis added.)

[61] Courts, in determining those 'clear words', are to use the purposive approach in interpreting a taxing statute — just as in any other statutes. This is the first of the principles of what is now referred to as the *Ramsay Principle*, enunciated by Lord Wilberforce in *WT Ramsay Ltd v Inland Revenue Commissioners; Eilbeck (Inspector of Taxes) v Rawling* [1982] AC 300, where he

said:

> ... I think it opportune to restate some familiar principles and some of the leading decisions so as to show the position we are now in.
>
> (1) *A subject is only to be taxed upon clear words, not upon 'intendment' or upon the 'equity' of an Act. Any taxing Act of Parliament is to be construed in accordance with this principle.* What are 'clear words' is to be ascertained upon normal principles: these do not confine the courts to literal interpretation. *There may, indeed should, be considered the context and scheme of the relevant Act as a whole, and its purpose may, indeed should, be regarded*: ... (Emphasis added.)

[62] The Federal Court in *Palm Oil Research and Development Board Malaysia* held that the *Ramsay Principle* applies in consonance with s 17A of the Interpretation Acts 1948 and 1967 ('the Interpretation Acts') in interpreting taxing statutes. Section 17A reads:

> 17A Regard to be had to the purpose of the Act
>
> In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.

[63] It further held that the principles set out in the advice of the Privy Council delivered by Lord Donovan in *Mangin v Inland Revenue Commissioner* [1971] AC 739 ('the Donovan Principles') is the correct approach to be adopted by a court when interpreting a taxing statue. Gopal Sri JCA (as he then was) sitting on the Federal Court panel, summarised the *Donavan Principles* as follows:

> First, the words are to be given their ordinary meaning. They are not to be given some other meaning simply because their object is to frustrate legitimate tax avoidance devices.
>
> Secondly, '... one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption so to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used'.
>
> Thirdly, the object of the construction of a statute being to ascertain the will of the legislature, it may be presumed that neither injustice nor absurdity was intended. If therefore a literal interpretation would produce such a result, and the language admits of an interpretation which would avoid it, then such an interpretation may be adopted.
>
> Fourthly, the history of an enactment and the reasons which led to its being passed may be used as an aid to its construction.

[64] His Lordship held that s 17A of the Interpretation Acts has no impact upon the well established guidelines applied by courts when interpreting a

taxing statute, and that s 17A and the guidelines in the *Donavan Principles* 'co-exist harmoniously for they operate in entirely different spheres when aiding a court in the exercise of its interpretive jurisdiction' — that it fits into the third principle of the *Donavan Principles*, which is to avoid an interpretation that produces injustice or absurdity.

[65] The purpose of the Stamp Act is to impose duties on specific instruments. These instruments are expressly listed in the First Schedule of the Act. In my view, if I were to agree with the submission of learned counsel for the respondent that the notice of appointment of advocate falls within the definition of the word 'agreement or memorandum of agreement', or 'deed', or a 'power or letter of attorney' in the First Schedule of the Stamp Act, it would result in absurdity. It would go against all rules of interpretation and would be an absurdity for this court to stretch the English language to such an extent by concluding that the meaning of the words 'agreement or memorandum of agreement', 'deed' and 'power or letter of attorney' includes 'notice of appointment of advocate in an election petition'. If Parliament wanted stamp duty to be payable on a notice of appointment of advocate in an election petition under Act 5, it would have included the notice as an instrument in the First Schedule of the Stamp Act.

[66] Moreover, I cannot agree with counsel for the respondent that stamp duty is payable on the notice of appointment of advocate because the Collector of Stamp Duty had previously on some occasions accepted payment of stamp duty on such notices. It is not open for courts to read into the Stamp Act, an implied power enabling the Collector of Stamp Duty, who is a member of the administration, to collect duties for the notice of appointment of advocate, when the Stamp Act did not confer on the Collector the power to do so. If I were to accept counsel for the respondent's argument, this court would be encroaching into the purview of the legislature by re-writing the Stamp Act, which courts are not empowered to do: see *Palm Oil Research and Development Board Malaysia*.

[67] The Federal Court in *Palm Oil Research and Development Board Malaysia* held although a taxing statute must be given a purposive approach, it does not mean that a taxing statute may be read so as to confer power on a member of the administration to collect tax when such power is not conferred in the statute. Gopal Sri Ram JCA (as he then was), in dismissing the appellant's counsel argument on this point, said:

> So, there is no doubt that even a taxing statute must be given a purposive approach. But that is quite different from saying, as learned counsel for the appellant is saying, that a taxing or revenue law statute may be read so as to confer power upon a member of the administration to collect a tax when there is neither an identification of the taxpayer nor conferment of a power to make subsidiary legislation in that

behalf. If this court were to accept the argument of counsel for the appellant, then we would not be promoting the purpose or object of the 1979 Act but be defeating it. For, in such event we would, through unauthorised legislative power, be re-writing statute.

[68] In that appeal, the Federal Court agreed with the Court of Appeal that the trial judge had erred when he widened a subsidiary legislation (Palm Oil (Research Cess) Order 1979) to empower the Minister to impose a research cess on palm oil millers when the Act (the Palm Oil Research and Development Act 1979) did not give the Minister the power to do so.

[69] For these reasons, I find that it would be wrong for this court to hold that stamp duty is payable on a notice of appointment of advocate by a petitioner in an election petition. Hence, I cannot agree with counsel for respondent that the notice of appointment of advocates by the petitioner is an instrument chargeable with stamp duty under the Stamp Act 1949, and that the EP should be struck out because the petitioner's notice of appointment of advocate had not been stamped.

DECISION

[70] For all the reasons above, I find that the EP had not complied with r 4(1)(b) of the EP Rules. I hereby strike out the EP by reason of the non-compliance with r 4(1)(b) of the EP Rules.

[71] Accordingly, I hereby determine that the respondent has been duly elected as the Member of Parliament for the Parliamentary seat of P.125 Putrajaya in the GE-15.

[72] The petitioner is ordered to pay the respondent costs in the sum of RM20,000 subject to the payment of the allocatur fee.

Election petition struck out.

Reported by Ashok Kumar